

CHAPTER 365 – RENTAL REGISTRATION AND LEAD-SAFE CERTIFICATION

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§ 365.01 Definitions

For purposes of this chapter:

(a) “Clearance examination” means an examination, performed by a clearance technician, lead inspector, or lead risk assessor, to determine whether lead hazards in a residential unit have been sufficiently controlled. A clearance examination includes a visual assessment, collection and analysis of environmental samples.

(b) “Clearance technician” means a person, other than a licensed lead inspector or lead risk assessor, who is licensed under RC Chapter 3742 to perform a clearance examination.

(c) “Director” means the Director of Building and Housing.

(d) “Governmental Entity” means the United States, or an agency thereof, the State of Ohio or a political subdivision thereof, or a county land reutilization corporation organized and existing under Chapter 1724 of the Revised Code or its wholly owned subsidiary.

(e) “Lead-based paint” means any paint or other similar surface-coating substance containing lead at or in excess of the level that is hazardous to human health as set forth in Rule 3701-32-19 of the Ohio Administrative Code (OAC) as it may be hereafter amended.

(f) “Lead hazard” means material that is likely to cause lead exposure and endanger an individual’s health as set forth in OAC Rule 3701-32-19. Lead hazard includes lead-based paint, lead-contaminated dust, lead-contaminated soil and lead-contaminated water pipes.

(g) “Lead inspector” means any individual licensed under RC Chapter 3742 who conducts a lead inspection, provides professional advice regarding a lead inspection, or prepares a report explaining the results of a lead inspection.

(h) “Lead risk assessment” means an on-site investigation to determine and report the existence, nature, severity, and location of lead hazards in a residential unit including information gathering from the unit, current owner’s knowledge regarding the age and painting history of the unit, and occupancy by children under six (6) years of age, visual inspection, limited wipe sampling or other environmental sampling techniques, and any other activity as may be appropriate.

(i) “Lead risk assessor” means a person licensed under RC Chapter 3742 who is responsible for developing a written inspection, risk assessment and analysis plan; conducting inspections for lead hazards in a residential unit; interpreting results of inspections or risk assessments; identifying hazard control strategies to reduce or eliminate lead exposures; and completing a risk assessment report.

(j) “Lead-safe certification” means that the owner of a residential rental unit built before January 1, 1978 has provided to the Director a clearance examination report or lead risk assessment that indicates that lead hazards are not identified in the unit. A lead-safe certification is valid for two (2) years from the date of the certification.

(k) “Local Agent in Charge” means a natural person who is of sound mind and at least eighteen (18) years of age and who is designated by the owner; who is authorized by the owner to receive service of a Notice of Violation on the owner’s behalf; and who is responsible for the maintenance and management of the residential rental unit.

(1) If the owner is a natural person and a resident of Cuyahoga County or a contiguous county, then the Local Agent in Charge may be the owner. Otherwise, the Local Agent in Charge shall be a natural person who resides within Cuyahoga County.

(2) If the Local Agent in Charge is not the owner, then the Local Agent in Charge shall, in a form to be supplied by the Director, accept responsibility with the owner (including any potential criminal, civil, or administrative liability) for the maintenance and management of the premises during any time when such person is identified as the Local Agent in Charge. The form shall include a provision in which the owner indemnifies the Local Agent in Charge for any such responsibility and liability. In any enforcement or pursuit of those responsibilities and liabilities, the City shall make a good faith effort to hold the owner exclusively responsible or liable, but the City may, in its sole discretion, hold the Local Agent in Charge responsible or liable, in part or in full.

(3) If the Local Agent in Charge is a real estate broker as defined in RC 4735.01, then the Local Agent in Charge shall include a copy of their real estate broker’s license in any form or application they file with the City.

(4) If the owner is a Governmental Entity, then the owner shall be deemed to be the Local Agent in Charge and owner shall not be required to designate any natural person as the Local Agent in Charge.

(l) “Owner” means the person, partnership or corporation that holds title to the residential rental unit.

(m) “Permanent” means an expected design life of at least twenty (20) years.

(n) “Residential rental unit” means any part of a building being used, designed or intended to be used as an individual’s private residence, including a unit occupied by one (1) or more persons regardless of whether the occupant pays rent or provides anything else of value to the titled owner in consideration for occupying the structure. A residential rental unit does not include a unit occupied by the titled owner.

(Ord. No. 1039-2023. Passed 2-5-24, eff. 2-6-24)

EXHIBIT 1

§ 365.02 Non-Owner-Occupied Residential Unit Registration Required; Application for and Issuance of Certificate of Non-Owner-Occupied Residential Registration; Certificate Approving Rental Occupancy; Revocation

(a) *Non-Owner-Occupied Residential Unit Registration Required.* An owner of a non-owner-occupied residential unit or units located in the City shall apply to register each unit in a manner prescribed in writing by the Director in a publicly available non-owner-occupied residential unit registry established and maintained by the Director. Upon approval of an application, the owner shall receive a Certificate of Non-Owner-Occupied Residential Unit Registration. Such an owner, before renting such a unit, shall obtain a Certificate Approving Rental Occupancy. If the owner is a Governmental Entity, then it shall be exempt from the rental registration requirements of this Section 365.02, unless and until the Governmental Entity intends to rent the unit as evidenced by the owner simultaneously applying for a Certificate Approving Rental Occupancy as described in division (d) of this section.

(b) *Information Required for Annual Non-Owner-Occupied Residential Unit Registration.* Application for a certificate of non-owner-occupied residential unit registration required by this Housing Code shall be made annually, on or before March 1st of each calendar year in accordance with the process prescribed in writing by the Director. Information, or documentation, to be supplied on, or with, an application shall include, but is not limited to, the following:

(1) The name, address, telephone number and email address of the owner or owners of the premises. If the owner is a partnership, then the names, addresses, telephone numbers and email addresses of all general partners. If the owner is a corporation, the names, addresses, telephone numbers and email addresses of the current statutory agent and all corporate officers of the corporation. The address for corporations and partnerships shall be the principal place of business and the address for persons shall be the home address;

A. If the owner is a natural person, then the application shall include a copy of the owner's driver's license or an acceptable government issued photo identification card.

B. If the owner is not a natural person, then the application shall include a current copy of the owner's Certificate of Good Standing issued by the Ohio Secretary of State.

(2) The name, address, telephone number and email address of a Local Agent in Charge.

(c) *Issuance of Certificate of Non-Owner-Occupied Residential Unit Registration.* Upon receipt of application, the Director shall issue a certificate of non-owner-occupied residential unit registration that shall state conspicuously: "This Certificate establishes that the residential unit described here is registered with the City of Cleveland Department of Building and Housing, which means that the owner has provided information to the Department concerning the property as required by law. This Certificate does not establish that the residential unit described herein is safe from lead paint hazards, meets Housing Code and Building Code requirements, or is fit and habitable to live in. A separate "Certificate Approving Rental Occupancy" from the Department of Building and Housing establishes a record of compliance with those laws and requirements." The Certificate shall also indicate:

(1) The street address or other identifying characteristics of the building or other structure;

(2) The name, address, telephone number and email address of the owner or owners of the premises. In the case of a partnership, the names of all general partners;

(3) If the record owner is a corporation, the names, addresses, telephone numbers and email addresses of the current statutory agent and all corporate officers of that corporation;

(4) The name, address, telephone number and email address of the managing agent of the premises, if any;

(5) The name, address (including the dwelling unit, apartment or room number), telephone number and email address of the superintendent, custodian, or other individual employed by the owner or managing agent to provide regular maintenance services, if any;

(6) The name, address, telephone number and email address of an individual representative of the owner or managing agent who may be reached or contacted at any time in the event of an emergency affecting the premises of any rental unit in that structure, including such emergencies as the failure of a utility system or service, and who has the authority to make emergency decisions concerning the building including its repairs or expenditures;

(7) The name, address, telephone number and email address of any Local Agent in Charge;

(8) The use and occupancy authorized; and

(9) A statement concerning the current lead-safe certification status of the property, if applicable and a statement concerning the existence of any Lead Hazard Control Order.

(d) *Certificate Approving Rental Occupancy.* Before a non-owner-occupied residential unit that is registered under this section can be rented, the owner must apply for and obtain a Certificate Approving Rental Occupancy. The owner shall apply for such certificate in a manner prescribed by the Director, using forms supplied by the Director.

The Director shall require documentation demonstrating compliance with the following requirements:

(1) That where a non-owner-occupied residential unit is part of a building with four (4) or more residential units, the unit shall have been examined by a licensed Heating Ventilating and Air Condition (HVAC) contractor and the HVAC systems for the unit(s) found to be well-maintained and in working order.

(2) That where a non-owner-occupied residential unit is part of a building with four (4) or more residential units, and where the service account holder for water service, electricity service, or natural gas service is not the occupant of that unit, then the account shall be active, paid in full, and otherwise in good standing.

(3) The City of Cleveland's Lead Safe Certification requirement and any Lead Hazard Control Orders.

(4) Any Notices of Violations issued for the unit, with acceptable documentation to include but not be limited to, as appropriate, certificates of correction, inspection reports, or documentation from contractors that demonstrates and certifies that the object of the Notice of Violation was resolved.

(5) That parcels shall not be delinquent regarding their property tax balance or in good standing on a County payment plan in the case of a tax delinquency.

(6) That parcels shall not be delinquent in fines and/or fees owed to the City, including but not limited to those related to nuisance abatement.

(e) *Revocation of Certificate of Non-owner-Occupied Residential Unit Registration.* The Director may revoke a certificate of non-owner-occupied residential Unit registration if the applicant makes any false statement in connection with the registration, or if the structure that was covered by it is no longer in compliance with the requirements of this Code, or if the owner, agent, or person in charge of a structure refuses to comply with any provision of this Code required for the use, maintenance and/or occupancy of a structure, including this chapter and Chapters 240, 367, 369 and 371. If the Director revokes a certificate of non-owner-occupied residential unit registration, the owner may appeal the Director's action to the Board of Zoning Appeals, in writing within ten (10) days from the date of the Director's action. The Board may sustain, disapprove or modify the Director's action, and the Board's decision shall be final.

(f) *Revocation of Certificate Approving Rental Occupancy.* Whenever the Director discovers that a non-owner-occupied residential unit no longer qualifies for a Certificate Approving Rental Occupancy, the Director shall revoke the certificate. The Director shall mail a copy of the revocation to the owner and to the residential unit addressed to the occupants by name or as "occupants". The Director may have the revocation posted on the residential unit. The revocation of the certificate shall in no way alter the rights of an occupant under a rental agreement or relieve the owner of its obligations under a rental agreement.

(g) *Notice of Change in Information.* It is the owner and the Local Agent in Charge's obligation to notify the Director, in writing, of any change in the name, address, telephone number, and/or email address of any information provided in this section within seven (7) days after the change occurs. If written notification is not provided as required in this section, the Director may revoke the certificate of non-owner-occupied residential unit registration until the changed name, address, telephone number, and/or email address is provided in writing.

(h) The owner or Local Agent in Charge of the unit shall pay a fine of one hundred dollars (\$100.00) upon revocation of the Certificate of Non-Owner-Occupied Residential Unit Registration or the Certificate Approving Rental Occupancy, and the certificates shall not be reissued while any fee or fine is outstanding. Cumulative fines for such revocations that are associated with a single owner shall not exceed thirty thousand dollars (\$30,000.00) per calendar year.

(i) Within two (2) years of passage of this ordinance, the Director shall submit to the Council a report produced by a third party that reviews and evaluates the implementation of Chapter 365 and Chapter 3106; the effect of those chapters on the housing market in Cleveland and on Cleveland residents; and the impact of the Local Agent in Charge requirement.

(Ord. No. 1039-2023. Passed 2-5-24, eff. 2-6-24)

§ 365.03 Rental Registration Fee

(a) An application for a certificate of non-owner-occupied residential unit registration shall be accompanied by a nonrefundable fee for each non-owner-occupied residential unit of seventy dollars (\$70.00) for each residential rental unit.

(b) The Board of Control shall establish any fee exemptions and guidelines for implementation.

(c) No fees shall be collected from any one (1) owner for all units owned by that owner within the City in excess of thirty thousand dollars (\$30,000.00) per calendar year.

(d) A certificate may be renewed prior to expiration upon application and payment of the fee described above. A certificate that has expired may be renewed upon payment of the above registration fee plus a late fee of one hundred dollars (\$100.00).

(e) The Director shall be authorized to enter into one or more letter agreements with an owner that is a Governmental Entity that reduces or waives the registration fee described in this Section 365.03.

(Ord. No. 1039-2023. Passed 2-5-24, eff. 2-6-24)

§ 365.04 Lead-Safe Certification Required for Residential Rental Units Built Before January 1, 1978

(a) *Presumption and Policy.* Any residential rental unit originally constructed prior to January 1, 1978 is presumed to have lead-based paint. It is the policy of the City to help prevent the poisoning of children by requiring that the presence of deteriorated lead-based paint on the interior and exterior of residential rental structures built before January 1, 1978 be identified and be correctly addressed by reducing and controlling lead-based paint hazards which may be present, in order to prevent human exposure to these hazards. Therefore, it is the further policy of the City to require all residential rental units in the City constructed prior to January 1, 1978 to have lead-safe certification no later than March 1, 2023.

(b) *Lead-Safe Certification.* Beginning March 1, 2021, all residential rental units constructed before January 1, 1978 shall have lead-safe certification from the Director according to a quarterly schedule established by the Director, but in no case later than March 1, 2023.

A lead-safe certification is valid for two (2) years from the date of issuance. No earlier than thirty (30) days prior to expiration, an owner shall re-apply for a lead-safe certification by providing the necessary documentation as set forth in this section.

(1) To obtain a lead-safe certification, an owner of a residential rental unit constructed prior to January 1, 1978 shall provide to the Director a copy of a clearance examination report or lead risk assessment, completed pursuant to applicable Ohio laws and rules, within ninety (90) days prior to the date of submission evidencing that lead hazards were not identified in the unit.

(2) For a structure constructed prior to January 1, 1978 that contains five (5) or more residential rental units to obtain a lead-safe certification, an owner shall provide to the Director a copy of a report, completed pursuant to applicable law within ninety (90) days prior to the date of submission, that lead hazards were not identified in the minimum number of units tested relative to the total number of units in the structure, according to Federal HUD Guidelines, 2012 edition, as may be amended from time to time.

(c) *Exemption.* To be exempt from the lead-safe certification requirement set forth in this section, the owner of a residential rental unit originally constructed prior to January 1, 1978 shall submit a copy of a comprehensive lead risk assessment and paint inspection report, issued by a lead risk assessor verifying that the unit has been abated of lead hazards in accordance with 40 C.F.R. 745.227 and applicable state law. The report shall have been completed within twenty (20) years prior to the date of submission to the Director.

(d) An owner of a residential rental unit is not required to obtain a lead-safe certification so long as the unit is unoccupied and the owner does not receive rent or anything else of value for the unit. The owner shall file an affidavit, in the form prescribed by the Director, that the unit is unoccupied and that the owner does not receive rent or anything else of value for the unit, which affidavit shall be filed annually so long as the unit remains unoccupied and the owner does not receive rent or anything else of value for the unit.

(e) *Affirmative Defense.* It is an affirmative defense to a charge for a violation of this section that the rental unit is unoccupied and the owner of the rental unit does not receive rent or anything else of value for the unit.

(f) *Conflict of Interest.* Any clearance technician, lead risk assessor or lead inspector who performs a clearance examination or lead risk assessment for purposes of this section shall not be:

- (1) the owner or an immediate family member, agent or employee of the owner;
- (2) part of a company or associated with a company that is directly or beneficially owned, controlled or managed by the owner, or by an immediate family member, agent or employee of the owner;
- (3) a person hired by or under contract with the owner to manage or maintain the owner's residential rental unit or units as directed by the owner;
- (4) a person who has been authorized by the owner to manage or maintain the owner's residential rental unit or units on the owner's behalf; or
- (5) a person who has a financial interest in the laboratory results of dust sampling or testing, or in the determination of whether lead hazards are identified in the owner's residential rental unit or units.

For purposes of this division "immediate family member" means a spouse residing in the owner's household and any dependent child.

(Ord. No. 747-2019. Passed 7-24-19, eff. 7-26-19)

§ 365.05 Internal Review

The Director, through a designated Lead-Safe Auditor, shall monitor the City lead-safe certification process to ensure efficiency and effectiveness. The Lead-Safe Auditor shall perform such other tasks as required by the Director, including maintaining a list of certified inspectors and contractors and coordinating regular monitoring and reporting with the Lead-Safe Advisory Board and other appropriate entities.

(Ord. No. 747-2019. Passed 7-24-19, eff. 7-26-19)

§ 365.06 Impact of Lead-Safe Certification Requirement; Review

Within one (1) year after implementation and yearly thereafter, the City shall review the impacts of the lead-safe certification requirement to determine if tenants have been unduly displaced and to identify any other negative unintended consequences that may have occurred due to implementation of the lead-safe certification requirement. If negative impacts are occurring or have occurred, the City will re-evaluate the program and work toward eliminating any negative impacts.

(Ord. No. 747-2019. Passed 7-24-19, eff. 7-26-19)

§ 365.07 Lead-Safe Advisory Board; Responsibilities

(a) There is hereby established a Lead-Safe Advisory Board to consist of seven (7) members: six (6) members appointed by the Mayor with approval of Council and one (1) member appointed by Council who shall be a member of Council. Of the members, at least two (2) shall be representatives from the Lead Safe Cleveland Coalition or similar organization, at least one (1) shall be a current owner of residential rental property located in the City, one (1) shall be the Lead-Safe Auditor, and one (1) shall be a current member of the Cleveland Area Board of Realtors or similar organization of realtors. Of the original appointments, three (3) shall be appointed for terms of two (2) years and four (4) shall be appointed for terms of three (3) years. Thereafter, the terms shall be four (4) years. None of the members shall be current employees of the City. The Lead-Safe Advisory Board shall meet as often as a majority of its members deems necessary, but at least quarterly in each calendar year. The Board shall establish its own rules and regulations.

(b) The responsibilities of the Lead-Safe Advisory Board shall be as follows: to provide recommendations for improvements to the City's lead-safe policies and procedures; to report, on a quarterly basis, progress and status of the City's Lead-Safe Certification requirement and other lead poisoning prevention related efforts to the Council, the Directors of Building and Housing, Public Health and Community Development, and the Lead Safe Cleveland Coalition or similar organization; to cause an appropriate outside entity or entities to produce impact analyses of the Lead Safe Certification program; to review such impact analyses and report same to the Council, the Directors of Building and Housing, Public Health and Community Development, and the Lead Safe Cleveland Coalition or similar organization.

(Ord. No. 747-2019. Passed 7-24-19, eff. 7-26-19)

§ 365.08 Records Kept by Department

Copies of all applications, certificates of rental registration and documents submitted for lead-safe certification are a public record and shall be kept on file by the Director as required by applicable law.

(Ord. No. 747-2019. Passed 7-24-19, eff. 7-26-19)

§ 365.09 Inspections; Right of Entry

(a) All residential rental units shall be subject to inspection for the purpose of determining compliance with the provisions of this Housing Code and all other applicable laws, ordinances, rules and regulations. Inspections shall be conducted in accordance with the residential rental unit inspection schedule established by the Director, or as may be necessary in the Director's discretion pursuant to specific complaint received under this Code.

(b) The Director and the Director's duly authorized agents or inspectors may enter at reasonable times any residential rental unit registered under this chapter in accordance with the right of entry defined in Chapter 367.

(Ord. No. 1039-2023. Passed 2-5-24, eff. 2-6-24)

§ 365.10 Severability

If any section, subsection, sentence, clause, phrase, or other portion of this chapter, or its application to any person, is, for any reason, declared invalid, in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions of this chapter.

(Ord. No. 747-2019. Passed 7-24-19, eff. 7-26-19)